

ROBERT FOX, ESQ.
630 Third Avenue
New York, New York 10017
(212) 867-9595

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CELESTINO PACHECO LOPEZ,

Plaintiff,

Case No. 14-CV-4443 (PKC)

MOHAMMED MOHAMMED, KIRSTEN
GOLDBERG, EL-RAWSHEH CAFÉ &
RESTAURANT, INC., EL-RAWSHEH
CAFÉ, INC., EL RAWSHEH CUISINE, INC., d/b/a
EL-RAWSHEH,

Defendants

AFFIRMATION OF ROBERT
FOX IN SUPPORT OF
MOTION TO VACATE
DEFAULT JUDGMENT

ROBERT FOX, an attorney admitted to practice in the courts of the State of New York and in the Eastern District of New York, duly affirms under penalty of perjury.

1. I am of counsel to Robert Fox, Esq. I make this Affirmation in support of the motion to vacate the default judgment entered on November 24, 2014 against on the grounds of Federal Rule of Civil Procedure 60(b)(1), (3), (4) and (6).

2. Mr. Mohammed Mohammed, one of the Defendants herein, is the vice-president of the Defendant El-Rawsheh, Cuisine. Inc. ("El Rawsheh") He and the president George Fanous manage the defendant restaurant Defendant El Rawsheh Cuisine, Inc., d/b/a El Rawsheh (See Fanous and Mohammed Affidavits).

3. On or about July 23, 2014, Plaintiff filed a Complaint against the Defendants (Exhibit A). The Affidavit of service upon these defendants is attached as Exhibit B. As Defendants did not answer the Complaint, Plaintiff filed a motion for a default judgment. On October 30, 2014, this Court granted the default judgment and took testimony from the plaintiff on that date (See Exhibits attached as Exhibit C). The Order granting default judgment in the amount of \$59,440.43 was entered November 24, 2014 (See Exhibit D). Judgment was entered on November 26, 2014. Defendants move to vacate this default judgment.

4. Plaintiff has named "Kirsten Goldberg" as a defendant in this action, alleging that she is a manager of El-Rawsheh. These Defendants are unaware of any such individual (Fanous and Mohammed Affidavits).

5. On or about June 15, 2014, the plaintiff Celestino Lopez ("Lopez") was hired as a dishwasher. He worked for approximately two weeks until about June 29, 2014. He worked for twenty hours per week at a salary of \$20 per hour. (Fanous Affidavit).

6. On or about June 29, 2014, Mr. Lopez terminated his employment, stating that there were too many dishes to wash and this made him nervous (Fanous Affidavit). Upon his departure, he was paid in full (Fanous Affidavit).

7. During the hearing on October 30, 2014, Plaintiff apparently produced two exhibits (See Exhibit C). One is a picture of the premises, the other is his own attorney's calculations of damages without other original documentation showing dates of employment. (See Exhibit . Neither exhibit contains evidence that the plaintiff worked on the dates he claims to have worked.

8. As set forth in the Affidavits of George Fanous and Ihab Ilbana, the Defendants were not served with the summons and complaint. As set forth at length in the Fanous Affidavit, the Plaintiff has misstated his dates of employment, hours of employment, salary as well as the names of the managers in his complaint.

9. As the Defendants were not served, this Court lacked jurisdiction to enter judgment. Moreover, even if the Court were to find it had jurisdiction, the Defendants have demonstrated excusable default and many meritorious defenses as well as the fact that the complaint contained false facts.

WHEREFORE it is respectfully requested that this court vacate the default judgment entered in this case and grant such other and further relief as the Court deems appropriate.

Dated: New York, New York
February 19, 2015

s/ Robert Fox

ROBERT FOX, ESQ.
Attorney for Mohammed
Mohammed, El-Rawsheh Café
& Restaurant, Inc., El-Rawsheh
Café, Inc., El Rawsheh Cuisine, Inc.
d/b/a El-Rawsheh herein
630 Third Avenue
New York, New York 10017
Phone: (212) 867-9595